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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No. : 10/720,531  
Inventor(s) : Gurusamy Manivannan, *et al.*  
Filed : November 25, 2003  
Art Unit : 1614  
Examiner : Kevin E. Weddington  
Docket No. : T-716A (Z-03830R)  
Confirmation No. : 4397  
Customer No. : 27752  
Title : Shave Gel Products

**APPEAL BRIEF**

Mail Stop Appeal Brief - Patents  
Commissioner for Patents  
P. O. Box 1450  
Alexandria, VA 22313-1450

This Brief is filed pursuant to the appeal from the decision communicated in the Final Rejection mailed on November 2, 2007 and the Advisory Action mailed on January 31, 2008.

A timely Notice of Appeal was filed on February 26, 2008.

**REAL PARTY IN INTEREST**

The real party in interest is The Procter & Gamble Company of Cincinnati, Ohio.

**RELATED APPEALS AND INTERFERENCES**

There are no known related appeals, interferences, or judicial proceedings.

### STATUS OF CLAIMS

Claims 3-6, 8-9, 11-14, 17, and 19-22 have been canceled. Claims 1-2, 7, 10, 15-16, 18, and 23-37 are currently pending in the application and stand rejected under 35 U.S.C. § 103(a).

Claims 1-2, 7, 10, 15-16, 18, and 23-37 are appealed.

A complete copy of the appealed claims is set forth in the Claims Appendix attached herein.

### STATUS OF AMENDMENTS

All amendments to date have been entered.

### SUMMARY OF CLAIMED SUBJECT MATTER

The claimed subject matter is directed to self-heating post-foaming (or self-foaming) shave gels.

The subject matter of independent claim 1 is as follows: A post-foaming shave gel product comprising: a container having a first chamber and second chamber and at least one dispensing valve for dispensing the contents of said chambers (*see, e.g.*, page 2, lines 27-29; page 11, lines 20-29); an oxidant component in the first chamber comprising a first shave gel base and an oxidizing agent (*see, e.g.*, page 2, lines 29-30); a reductant component in the second chamber comprising a second shave gel base and a reducing agent (*see, e.g.*, page 2, line 30 to page 3, line 1); the first shave gel base and the second shave gel base each being an oil-in-water emulsion (*see, e.g.*, page 3, lines 1-2), and comprising, by weight, about 55% to about 90% water, about 3% to about 20% of a water-dispersible surface active agent capable of forming a lather, and about 1% to about 6% of a volatile self-foaming agent (*see, e.g.*, page 3, lines 1-4 and the Examples); and the oxidizing agent and the reducing agent being selected and being present in such proportion to provide an exothermic reaction upon mixing of the oxidant component and the reductant component during use of the shaving composition (*see, e.g.*, page 4, lines 22-29).

The subject matter of independent claim 27 is as follows: A shave gel product comprising: a first chamber (*see, e.g.*, page 2, lines 27-29; page 11, lines 20-29); an oxidant component comprising a first gel base and an oxidizing agent, the oxidizing component located in the first chamber (*see, e.g.*, page 2, lines 29-30); a second chamber (*see, e.g.*, page 2, lines 27-29; page 11, lines 20-29); and a reductant component comprising a second gel base and a reducing agent, the reductant component located in the second chamber (*see, e.g.*, page 2, line 30 to page 3, line 1).

The subject matter of independent claim 35 is as follows: A shave gel product comprising: a container having a first chamber and a second chamber and at least one dispensing valve for dispensing the contents of said chambers (*see, e.g.*, page 2, lines 27-29; page 11, lines 20-29); an oxidant component comprising a first gel base and an oxidizing agent, said oxidizing component located in the first chamber (*see, e.g.*, page 2, lines 29-30); and a reductant component comprising a second gel base and a reducing agent selected from the group consisting of thiosulfate and sulfite compounds, compounds with a thiourea backbone, and mixtures thereof, the second shave composition located in the second chamber (*see, e.g.*, page 2, line 30 to page 3, line 1; page 8, lines 25-30).

#### GROUND'S OF REJECTION TO BE REVIEWED ON APPEAL

Rejection of claims 1-2, 7, 10, 15-16, 18, and 23-37 under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent 3,772,203 (hereinafter referred to as "Gray") in view of U.S. Patent 3,541,581 (hereinafter referred to as "Monson").

#### ARGUMENTS

##### **I. Gray Teaches Directly Away from the Claimed Features**

The pending claims are directed to a shave gel product comprising a container having a first chamber and distinct second chamber. A complete shave gel composition is disposed within each of the first and second chambers. Gray does not teach or suggest a complete shave gel composition within separate container storage areas, and instead discloses storing the oxidizing agent, along with another single ingredient (a stabilizer for

the oxidizing agent) separately from the base cosmetic formula (*see* the Examples). Gray at Column 2, lines 25-28, states that “It is preferred to store the oxidant separately from the other cosmetic or shaving cream ingredients and it is similarly preferred to store the sulfonic acid or sulfonate reductant with the other ingredients” (emphasis added). It is clear from this statement that the container storage area holding the oxidant does not constitute a complete shaving cream composition. And although the above statement employs the term “preferred,” this is the only direction of Gray’s disclosure since this explicit design choice is taught in each and every one of Gray’s examples (*see* Examples 2-15). Accordingly, Gray teaches directly away from features recited in the pending claims.

The United States Supreme Court, in its 2007 *KSR* opinion directed to obviousness, stated that “when the prior art teaches away from combining certain elements, discovery of successful means of combining them is more likely to be nonobvious.” *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1740 (2007) (internal citations omitted). Here, the pending claims include complete shave gel compositions within each of the separate storage chambers, while Gray teaches an incomplete shaving cream compositions (oxidizing agent with another single ingredient (a stabilizer for the oxidizing agent)) within at least one of its container storage areas. Gray accordingly teaches away from the claimed subject matter.

The above teaching away argument was presented in Appellants’ reply to the Final Rejection. The Advisory Action however did not address this argument, and instead, merely stated that “[t]he request for reconsideration has been considered but does NOT place the application in condition for allowance because [t]he applicants have not demonstrated on the record, a side-by-side comparison of Gray (3,772,203) shaving gel versus the present application’s shave gel [sic], wherein, the present application’s shaving gel produces superior results over the Gray’s shaving gel.” Including complete shaving gel compositions within each storage chamber can help to ensure that the other beneficial properties of the shave gel product are delivered in use, as is described in the specification:

[a]fter dispensing, the gels provide a smooth, creamy, stable lather that develops quickly when the gels are spread over the skin. The

lather remains creamy and stable when the gel is heated. The gels provide desirable performance properties such as lubricity and skin-friendliness, which are maintained during and after heating. *See, e.g.,* page 4, lines 6-9.

A user dispenses the contents of the two packaging chambers and subsequently mixes the shave gels to generate an exothermic reaction. The claimed shave gel products do not require a manufactured mixer<sup>1</sup>, and thus, various levels of mixing will likely take place among different users in their hands (or with a brush or other device) and/or on their face. Therefore, while a compromise in heat generation may occur if a homogenous mixture is not created with the claimed shave gel product, the other benefits provided by the shave gel product (as noted above), and typically expected from consumers, will unlikely be compromised since complete shave gel compositions are included in the separate chambers and are dispensed as such even prior to mixing the two streams. With Gray's preferred and only disclosed approach of "stor[ing] the oxidant separately from the other cosmetic or shaving cream ingredients," there is the potential without adequate mixing for a user to end up with an incomplete shaving cream formulation on part of the skin they intend to shave, which could potentially compromise lubricity and protection of the skin.

## **II. Grey and Monson Taken Together Fail to Teach or Suggest All of the Features Recited in Claims 7 and 35-37**

Claims 7 and 35-37 recite that the reducing agent "is selected from the group consisting of thiosulfate and sulfite compounds, compounds with a thiourea backbone, and mixtures thereof." Gray relies upon sulfinic acids and sulfinates exclusively, making use of the foaming sulfonates which are created when sulfinates are oxidized (*see* Column 1, lines 57-60). Thus, Gray is silent with respect to the particular reducing agents recited in claims 7 and 35-37. And since Monson fails to remedy the shortcomings of Gray, the subject matter of claims 7 and 35-37 are patentably distinct from the applied references. Similar to the teaching away argument presented above, this distinction was not addressed in the Advisory Action.

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<sup>1</sup> Note that the claims do not exclude a mixer either.

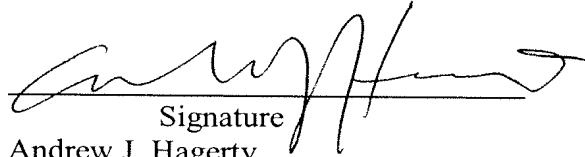
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SUMMARY

In view of all of the above, it is respectfully submitted that the Section 103 rejection of record should be withdrawn.

Respectfully submitted,

THE PROCTER & GAMBLE COMPANY

A handwritten signature in black ink, appearing to read "Andrew J. Hagerty", is written over a horizontal line.

Signature

Andrew J. Hagerty

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Date: May 29, 2008  
Customer No. **27752**

## CLAIMS APPENDIX

1. A post-foaming shave gel product comprising:
  - a container having a first chamber and second chamber and at least one dispensing valve for dispensing the contents of said chambers;
  - an oxidant component in the first chamber comprising a first shave gel base and an oxidizing agent;
  - a reductant component in the second chamber comprising a second shave gel base and a reducing agent;
  - the first shave gel base and the second shave gel base each being an oil-in-water emulsion, and comprising, by weight, about 55% to about 90% water, about 3% to about 20% of a water-dispersible surface active agent capable of forming a lather, and about 1% to about 6% of a volatile self-foaming agent; and
  - the oxidizing agent and the reducing agent being selected and being present in such proportion to provide an exothermic reaction upon mixing of the oxidant component and the reductant component during use of the shaving composition.
2. The shave gel product of claim 1 wherein the water-dispersible surface active agent of at least one of the first shave gel base and the second shave gel base comprises a non-ionic surfactant.
7. The shave gel product of claim 1 wherein the reducing agent is selected from the group consisting of thiosulfate and sulfite compounds, compounds with a thiourea backbone, and mixtures thereof.
10. The shave gel product of claim 1 wherein the water-dispersible surface active agent of at least one of the first shave gel base and the second shave gel base comprises a blend of two non-ionic surfactants, one of the surfactants being more hydrophobic than the other.

15. The shave gel product of claim 1 wherein at least one of the first shave gel base and the second shave gel base further comprises a catalyst selected to catalyze the exothermic reaction between the oxidizing agent and the reducing agent.

16. The shave gel product of claim 1 wherein at least one of the first shave gel base and the second shave gel base further comprises a neutralizing agent selected to neutralize acid generated by the exothermic reaction between the oxidizing agent and the reducing agent.

18. The shave gel product of claim 1 wherein said water-dispersible surface active agent of at least one of the first shave gel base and the second shave gel base comprises from about 0.2% to about 1.5% of an amphoteric surfactant.

23. The shave gel product of claim 1 wherein said oxidant component and said reductant component are mixed, at least in part, during dispensing.

24. The shave gel product of claim 1, wherein said oxidant component and said reductant component are mixed, at least in part, after dispensing.

25. The shave gel product of claim 1 wherein said oxidant component contains, by weight, about 2% to about 10% of said oxidizing agent.

26. The shave gel product of claim 1 wherein said oxidant component contains, by weight, about 2% to about 10% of said reducing agent.

27. A shave gel product comprising:  
a first chamber;  
an oxidant component comprising a first gel base and an oxidizing agent, the oxidizing component located in the first chamber;  
a second chamber; and



a reductant component comprising a second gel base and a reducing agent, the reductant component located in the second chamber.

28. The shave gel product of claim 27 wherein the oxidant component and the reductant component are, at least in part, mixed as they are removed from said chambers.

29. The shave gel product of claim 27 wherein the oxidant component and the reductant component are mixed after removal from said chambers.

30. The shave gel product of claim 27 wherein the oxidizing agent and the reducing agent are selected and present in such proportion to provide an exothermic reaction upon at least partial mixing of the oxidant component and the reductant component.

31. The shave gel product of claim 27 wherein the reducing agent is selected from the group consisting of thiosulfate and sulfite compounds, compounds with a thiourea backbone, and mixtures thereof.

32. The shave gel product of claim 27 wherein each of the first gel base and the second gel base is an oil-in-water emulsion, and comprise, by weight, about 55% to about 90% water, about 3% to about 20% of a water-dispersible surface active agent capable of forming a lather, and about 1% to about 6% of a volatile self-foaming agent.

33. The shave gel product of claim 32 wherein the water-dispersible surface active agent of at least one of the first gel base and the second gel base comprises a non-ionic surfactant.

34. The shave gel product of claim 32 wherein the water-dispersible surface active agent of at least one of the first gel base and the second gel base comprises a blend of two non-ionic surfactants, one of the surfactants being more hydrophobic than the other.

35. A shave gel product comprising:

a container having a first chamber and a second chamber and at least one dispensing valve for dispensing the contents of said chambers;

an oxidant component comprising a first gel base and an oxidizing agent, said oxidizing component located in the first chamber; and

a reductant component comprising a second gel base and a reducing agent selected from the group consisting of thiosulfate and sulfite compounds, compounds with a thiourea backbone, and mixtures thereof, the second shave composition located in the second chamber.

36. The shave gel product of claim 35 wherein the oxidant component and the reductant component are mixed, at least in part, during dispensing.

37. The shave gel product of claim 35 wherein the oxidant component and the reductant component are mixed after dispensing.

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## EVIDENCE APPENDIX

None.

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## RELATED PROCEEDINGS APPENDIX

None.